

[Cite as *State ex rel. Ezelle v. Hilow*, 2010-Ohio-5621.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95943

**STATE OF OHIO, EX REL.
AUDWIN EZELLE**

RELATOR

vs.

HENRY J. HILOW

RESPONDENT

**JUDGMENT:
COMPLAINT DISMISSED**

Writ of Mandamus

Sua Sponte Order No. 439000

RELEASE DATE: November 16, 2010

FOR RELATOR

Audwin Ezell, pro se
Inmate No. 540-881
Marion Correctional Institution
P.O. Box 57
Marion, Ohio 43302

FOR RESPONDENT

Henry J. Hilow, pro se
Mcginty, Hilow & Spellacy Co., LPA
614 W. Superior Avenue
Suite 1300
Cleveland, Ohio 44113

PATRICIA A. BLACKMON, J.:

{¶ 1} The relator, Audwin Ezell, has filed a complaint for a writ of mandamus through which he seeks an order that requires the respondent, Henry J. Hilow, to provide copies of “discovery and copy thereof of all investigative findings papers; notes of the investigation; photographs; coroner’s reports; papers on motion for discovery he may have received from the prosecutor’s office; voir dire; and including all paperwork relative to his defense in the case he represented relator in” *State v. Ezell*, Cuyahoga County Court of Common Pleas case No. CR-500481. Sua sponte, we dismiss the

relator's complaint for a writ of mandamus, per Civ.R. 12(B)(6), since he fails to state a claim upon which relief can be granted.

{¶ 2} A complaint for a writ of mandamus is a special proceeding which is brought to have this court order an inferior tribunal, corporation, board or person to perform an act which, as a result of an office, trust, or station, the responding party is under a clear legal duty to perform. R.C. 2731.01. See, also, *State ex rel. Brammer v. Hayes* (1955), 164 Ohio St.373, 130 N.E.2d 795.

The relator has failed to establish that the respondent possesses any clear legal duty to provide the requested information or records. In addition, a client attempting to obtain information or records from his attorney concerns a private right against a private person. Mandamus will not lie to enforce a private right against a private person. *State ex rel. Pressley v. Indus. Comm.* (1967), 11 Ohio St.2d 141, 228 N.E.2d 631. See, also, *State ex rel. Grahek v. McCafferty*, Cuyahoga App. No. 88614, 2006-Ohio-4741; *State ex rel. Jones v. Luskin*, Cuyahoga App. No. 87185, 2006-Ohio-3686; *State ex rel. Tierney v. Jamieson*, Cuyahoga App. No. 80302, 2001-Ohio-4148; *State ex rel. Rodgers v. Riley* (Aug. 9, 2001), Cuyahoga App. No. 79977.

{¶ 3} Accordingly, we dismiss this action sua sponte. Costs to relator. It is further ordered that the Clerk of the Eighth District Court of Appeals serve notice of this judgment upon all parties as required by Civ.R. 58(B).

Complaint dismissed.

PATRICIA A. BLACKMON, JUDGE

KENNETH A. ROCCO, P.J., and
MARY J. BOYLE, J., CONCUR